STATE OF MICHIGAN

COURT OF APPEALS

JAMES CRAIGIE and NANCY CRAIGIE,

Plaintiffs-Appellants,

v

RAILWAY MOTORS, INC.,

Defendant/Cross-Defendant-Appellee,

and

UNIVERSAL AUTO RECOVERY,

Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
June 9, 2000

No. 213573
Oakland Circuit Court
LC No. 97-548607-CP

Before: Kelly, P.J., and Doctoroff and Collins, JJ.

PER CURIAM.

Plaintiffs James and Nancy Craigie appeal as of right from the circuit court's order denying reconsideration of its orders granting summary disposition to defendants Railway Motors (Railway) and Universal Auto Recovery, Inc. (Universal) pursuant to MCR 2.116(C)(10), and denying plaintiffs summary disposition in this conversion case. We affirm.

Plaintiffs purchased a 1990 Dodge van from Railway in December 1996. At that time they signed a purchase agreement and completed a loan application to The Money Store, Inc. (The Money Store). Railway issued plaintiffs a check for $1,500 in exchange for their 1987 Pontiac Firebird, and plaintiffs then used that $1,500 for the downpayment on the van. The purchase agreement provides that plaintiffs were financing the balance of the purchase price of the van and that they were granting Railway a security interest in the van to secure repayment of the loan. The agreement also provides as follows:

> E. DEFAULT: If you breach any warranty or default in the performance in any promise you make in this agreement, including, but not limited to, making of any

> payment when due . . . we may at our option and without notice or demand . . . (3) take immediate possession of the motor vehicle . . . .

Railway attempted to assign the financing of the van to The Money Store and completed and filed the necessary registration and title information naming The Money Store as the lienholder on the van. Plaintiffs left Railway with the van and headed for Michigan, with the understanding that their purchase was being financed through The Money Store. While en route to Michigan, the van broke down. Plaintiffs called Railway and learned that it was having difficulty obtaining financing for them through The Money Store. Ultimately, The Money Store refused to finance the deal and returned the security agreement to Railway. In the meantime, however, in a letter dated January 6, 1997, The Money Store informed plaintiffs that it was financing the van. Also, the registration naming The Money Store as the lienholder was recorded on January 19, 1997.

On January 14, 1997, Railway sent plaintiffs a letter informing them that they had missed their January 13, 1997 car payment, asking them to mail their payment to Railway, and asking them for their telephone number. Plaintiffs made no payment. On February 13, 1997, at the request of Railway,[1] Universal repossessed the van from plaintiffs' residence in Michigan. Plaintiffs do not dispute that the repossession was accomplished without a breach of the peace. Railway informed plaintiffs in a letter dated February 15, 1997, that it had repossessed the vehicle because of nonpayment and that plaintiffs could retrieve the personal belongings that were in the van from Universal. Nancy Craigie responded in a letter dated February 25, 1997. She acknowledged that no payments had been made, but argued that because of problems with the van and the purchase contract, plaintiffs were entitled to withhold payment. On August 7, 1997, Railway became the lienholder of record when it filed a transfer of lien interest in the van with the California Department of Motor Vehicles (California DMV).

In July 1997, plaintiffs filed a complaint against defendants in Michigan alleging conversion and conspiracy and asking for damages as well as return of the vehicle. The parties all filed motions for summary disposition. At the conclusion of oral arguments on the motions, the circuit court ruled that Article 9 of the Uniform Commercial Code (UCC), which has been adopted by both California and Michigan, controls in this case. It concluded that the contract between plaintiffs and Railway gave Railway a security interest in the van, and that under the UCC, the security interest attached when plaintiffs signed the contract that described the van, they were given value, and they obtained rights in the van. The contract also provided that Railway had the right to repossess if plaintiffs defaulted. While the court acknowledged that Railway's security interest was not perfected, it found that Railway rightfully repossessed the van under both the contract and the UCC because the security interest had attached and plaintiffs were in default. Accordingly, the court granted defendants' motions for summary disposition and denied plaintiffs' motion for summary disposition.

Plaintiffs argue on appeal that the circuit court erred in denying plaintiffs summary disposition and granting defendants summary disposition because under the California Vehicle Code, Railway had no legal interest in the van and thus was not privileged to repossess it. This Court reviews a lower court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is appropriate when "[e]xcept as to the amount of damages, there is no genuine issue as to any material

fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Statutory interpretation is a question of law also reviewed de novo on appeal. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

In Michigan, conversion is defined generally as "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). To determine whether Railway was entitled to repossess plaintiffs' van, we must consider the relevant provisions of Article 9 of the UCC, which has been adopted by both Michigan, MCL 440.9101 *et seq.*; MSA 19.9101 *et seq.*; and California, Cal. Comm. Code §§ 9101-9508, and, because the vehicle in question was titled in California, those provisions of the California Vehicle Code that may affect the operation of the California Commercial Code. See MCL 440.1105(1); MSA 19.1105(1); Cal. Comm. Code § 1105(1).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first criterion in determining intent is the specific language of the statute. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). If the plain and ordinary meaning of a statute is clear, judicial construction is normally neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). However, if reasonable minds can differ with respect to the meaning of a statute, judicial construction is appropriate. *Adrian Sch Dist v Michigan Public Sch Employees Retirement Sys*, 458 Mich 326, 332; 582 NW2d 767 (1998). If a literal construction of a statute would produce unreasonable and unjust results inconsistent with the purpose of the statute, the court may depart from a literal construction. *Rowell v Security Steel Processing Co*, 445 Mich 347, 354; 518 NW2d 409 (1994).

We agree with the circuit court that the plain language of the UCC provides for enforcement of a security interest once such interest has attached. See MCL 400.9203; MSA 19.9203; Cal. Comm. Code § 9203. Plaintiffs argue, however, that the California Vehicle Code imposes a further requirement that a secured party *perfect* its interest in the collateral before it may avail itself of remedies provided for by the UCC in the event of default by the party that granted the security interest. Plaintiffs point specifically to California Vehicle Code §§ 6300, 6301, and 6303[2] in support of their argument. Contrary to plaintiffs' assertions, however, the language of the cited sections does not provide that perfection is a prerequisite to enforcement of a security interest. Indeed, in *T & O Mobile Homes v United California Bank*, 40 Cal 3d 441, 447 (1985), the Supreme Court of California stated that "[a] security interest attaches *and becomes enforceable* when (1) either the debtor has signed a security agreement or the secured party is in possession of the collateral, (2) value has been given, and (3) the debtor has rights in the collateral. (§ 9203.)" [Emphasis added.] The court further explained that it is perfection of a security interest in a motor vehicle that is governed exclusively by the provisions of § 6301 and noted as follows:

> Like full title statutes in other states, Vehicle Code section 6301 holds a purchaser to constructive notice of a security interest from the time the secured party's

> application for registration as legal owner is deposited with the DMV. . . . However, the purpose of this provision *is primarily to establish priority among two or more competing lienholders* according to time of receipt of the applications. [*Id.* at 449. Citations omitted; emphasis added.]

See also *Hartford Financial Corp v Burns*, 96 Cal App 3d 591, 598-599 (1979). Given the plain language of the cited provisions and the California case law interpreting those provisions, we conclude that the California Vehicle Code does not require that a secured party perfect its interest before it may enforce it against the party that granted the security interest.

Plaintiffs also argue, however, that any security interest Railway may have had in the van under the UCC was unenforceable because Railway's failure to comply with California Vehicle Code provisions governing transfers of interests in motor vehicles after The Money Store returned the security agreement to Railway rendered "ineffective" the transfer of the security interest from The Money Store to Railway. In support of their argument, plaintiffs point to California Vehicle Code § 5600,[3] which provides as follows:

> No transfer of the title or any interest in or to a vehicle registered under this code shall pass, and any attempted transfer *shall not be effective*, until the parties thereto have fulfilled either of the following requirements:
>
> (a) The transferor has made proper endorsement and delivery of the certificate of ownership to the transferee as provided in this code . . . .
>
> (b) The transferor has delivered to the department or has placed in the United States mail addressed to the department the appropriate documents for the registration or transfer of registration of the vehicle pursuant to the sale or transfer except as provided in Section 5602. [Emphasis added.]

We find that plaintiffs' literal interpretation of the word "effective" in § 5600 is not supported by the purpose of the statute as described and interpreted by California case law. California case law states that "the registration requirements of this code were enacted in interest of public welfare to protect innocent purchasers of automobiles and afford identification of vehicles and persons responsible in cases of accidents and injuries." *Dorsey v Barba*, 38 Cal 2d 350, 354 (1952). See also *Rainey v Ross*, 106 Cal App 2d 286, 291 (1951); *Henry v General Forming, Ltd*, 33 Cal 2d 223, 227 (1948). Although the version of the statute referred to in the cited cases is a predecessor to the statute at issue in this case, the language on which plaintiff relies is substantially the same.[4]

In *Henry*, *supra*, the Supreme Court of California addressed a situation somewhat analogous to the case before this Court. The defendant in *Henry* was next on a list at a Buick dealership for purchase and delivery of a new car. Because he was unable to finance the purchase, he sold his purchase rights to a used car dealer. The dealer's agents accompanied the defendant to the dealership and executed the purchase of the vehicle using the dealer's check and the defendant's name on the registration and title papers. The defendant immediately gave possession of the vehicle and papers to

the dealer's agents. Subsequently, the plaintiffs in *Henry* executed a levy against the defendant and took possession of the vehicle in question, which was still registered in the defendant's name, from the used car dealer's lot. The dealer initiated third-party claim proceedings, alleging ownership of the vehicle. The trial court concluded that the defendant owned the vehicle, finding that "asserted violations of the Vehicle Code required that result." *Henry, supra* at 224-225. The Supreme Court of California reversed the judgment, stating as follows:

> It may be assumed that there has been a violation of the provisions of the Vehicle Code invoked by the plaintiff, as to which prosecution on a charge of misdemeanor might ensue as against both the defendant and the third party claimant. But it does not follow that the violation has the consequence claimed by the plaintiff. In no case relied on has it been so held. On the contrary, similar assumed violations of the Vehicle Code have never been deemed to affect the actual property interest in the vehicle where it was necessary in pertinent proceedings to determine the issues of title and right of possession. . . . In *Willard H. George, Ltd., v Barnett, supra* (65 Cal.App.2d Supp. 828, 150 P.2d 591), the contention that the rights of a third party claimant who held the beneficial interest were forfeited by noncompliance with the registration requirements was expressly rejected. [*Id.* at 226.]

See also *Security Pacific National Bank v Goodman,* 24 Cal App 3d 131, 136 (1972) (stating that a transfer of the property interest in a motor vehicle is effective as between the immediate parties even though they have not complied with the registration statute).

Although plaintiffs argue that the facts of this case do not fall under the exception to § 5600 described in *Henry* and *Security Pacific* because The Money Store and Railway were not the "immediate parties" in the sale of the vehicle at issue, we have no reason to believe that the reasoning of those cases does not extend to the facts of this case. Here, as in the cited cases, no purpose consistent with the statute would be served by rendering the security interest at issue unenforceable by Railway against plaintiffs. The Money Store willingly returned the security interest to Railway and makes no claim on the van. Moreover, plaintiff's literal interpretation of the word "effective" in § 5600 could lead to the absurd result that no one would be entitled to enforce the security interest granted by plaintiffs. Thus, we depart from a literal interpretation of § 5600 and find that the trial court properly applied the relevant UCC provisions. *Rowell, supra* at 354. Although Railway had not filed its interest in the van at the time of repossession, Railway's security interest had attached. MCL 400.9203; MSA 19.9203; Cal. Comm. Code § 9203. Therefore, when plaintiffs defaulted, Railway was entitled to repossess the van. MCL 400. 9503; MSA 19.9503; Cal. Comm. Code § 9503.

Plaintiffs argue next that because the certified records of the California DMV establish that Railway was neither a legal owner nor a secured party at the time of repossession, the trial court infringed on the California DMV's "primary jurisdiction" in failing to defer to the California DMV's "determination" that Railway held no interest of any kind in plaintiffs' van and concluding that Railway was entitled to repossess the van. However, given our conclusion that the California Vehicle Code does not require that a party with a security interest in a vehicle be a registered owner to enforce its interest, this argument has no merit.

Plaintiffs' last four arguments on appeal address a number of alleged irregularities in the transaction between Railway and plaintiffs that, argue plaintiffs, render Railway's security interest unenforceable or, at the very least, raise genuine issues of material fact with regard to whether Railway's security interest was enforceable. It is clear from its statements on the record and its opinions, however, that the circuit court did not address or decide these issues in ruling on the parties' motions for summary disposition or plaintiffs' motion for reconsideration. Questions not addressed or decided by the lower court are not preserved for appeal. *Swickard v Wayne Co Medical Examiner,* 438 Mich 536, 562; 475 NW2d 304 (1991). Nor do we believe that the circuit court erred in not addressing issues based on law that was not briefed until plaintiffs' motion for reconsideration. See *Charbeneau v Wayne Co General Hosp,* 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Jeffrey G. Collins

[1] Railway has since acknowledged that it provided Universal with a forged certificate of title on which it named itself, rather than The Money Store, as the legal owner. At the same time the trial court granted summary disposition to defendants on plaintiffs' claims, it granted Universal's motion for summary disposition on its claim of fraud against Railway. That ruling is not a subject of this appeal.

[2] Section 6300 provides, in pertinent part:

> Except as provided in Sections 5905, 5907, and 5908, no security interest in any vehicle registered under this code, irrespective of whether the registration was effected prior or subsequent to the creation of the security interest, is *perfected* until the secured party or his or her successor or assignee has deposited . . . a properly endorsed certificate of ownership to the vehicle subject to the security interest showing the secured party as legal owner if the vehicle is then registered under this code . . . . [Emphasis added.]

Section 6301 provides, in pertinent part:

> When the secured party, his or her successor, or his or her assignee, has deposited . . . a properly endorsed certificate of ownership showing the secured party as legal owner . . . the deposit constitutes *perfection* of the security interest and the rights of all persons in the vehicle shall be subject to the provisions of the Uniform Commercial Code, but the vehicle subject to the security interest shall be subject to a lien for services and materials as provided in Chapter 6.5 . . . of Title 14 of Part 4 of Division 3 of the Civil Code. [Emphasis added.]

Finally, § 6303 provides:

> Except as provided in Sections 5905, 5907 and 5908, the method provided in this chapter for *perfecting* a security interest on a vehicle registered under this code is exclusive, but the effect of such perfection, and the creation, attachment, priority and validity of such security interest shall be governed by the Uniform Commercial Code. [Emphasis added.]

[3] Plaintiffs also point to California Vehicle Code §§ 370 and 6302 in support of their argument that failure to comply with the transfer requirements of § 5600 precludes enforcement of a security interest. Again, however, neither of these provisions suggests that registration, or perfection, is a prerequisite to enforcing a security interest. Section 370 simply defines a "legal owner" as "a person holding a security interest in a vehicle which is subject to the provisions of the Uniform Commercial Code. . . ;" it does not require that the security interest be filed, or perfected, to be subject to the provisions of the UCC. Section 6302 simply provides for the process by which a secured party becomes a *registered* legal owner; it does not require registration as a prerequisite to enforcing a security interest.

[4] The predecessor statute, Section 186 of the California Vehicle Code, provided, in pertinent part, as follows:

> No transfer of title or any interest in or to a vehicle registered hereunder shall pass and any attempted transfer *shall not be effective* unless and until the parties thereto have fulfilled the requirements for registration then specified. [*Henry, supra* at 225. Emphasis added.]